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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHETAN SHAH, BADRI MALYNUR, and
ERIC CHRISTIAN SMITH

Appeal 2007-4528
Application 09/757,322
Technology Center 3600

Decided: April 28, 2008

Before LINDA E. HORNER, JOSEPH A. FISCHETTI, and
STEVEN D.A. MCCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Chetan Shah et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM-IN-PART.

THE INVENTION

The Appellants' claimed invention is to a method and system for automating services related to employment recruiting (Spec. 1:9-11).

Claims 1 and 11, reproduced below, are representative of the subject matter on appeal.

1. A method of identifying a candidate for a position of employment, said method comprising the steps of:
 - (a) creating a position advertisement including a datum particularizing said position of employment;
 - (b) storing said position advertisement in a computer searchable position database;
 - (c) associating a keyword with said position advertisement;
 - (d) associating a search periodicity with said position advertisement;
 - (e) upon expiration of a period substantially equal to said search periodicity, searching at least one computer searchable candidate database for a candidate resume including said keyword;
 - (f) scoring a candidate resume identified by said search as a function of said keyword; and
 - (g) presenting an identity of a candidate associated with said candidate resume identified by said search to a computer user on a basis of said score.

11. A method of employment recruiting comprising the steps of:
- (a) creating a position advertisement, including a datum particularizing a position of employment;
 - (b) associating a keyword with said position advertisement;
 - (c) storing said position advertisement and said keyword in a computer searchable database;
 - (d) associating a search periodicity parameter in a computer searchable database;
 - (e) in response to expiration of a period substantially equal to said search periodicity parameter, initiating a computer search of at least one computer searchable candidate database for a candidate resume including said keyword;
 - (f) scoring a candidate resume identified by said search as a function of said included keyword;
 - (g) including an identification of a candidate associated with said candidate resume in a result reportable to a computer user if said keyword score of said candidate resume at least equals a threshold keyword score;
 - (h) in response to a determination that said keyword score at least equals said threshold keyword score, automatically contacting said candidate and requesting a response to at least one screening question associated with said position advertisement;
 - (i) scoring a response of said candidate to said screening question; and
 - (j) reporting said screening question response score in a search result presented to said computer user.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Fredrickson US 2002/0019768 A1 Feb. 14, 2002

www.monster.com, retrieved from Internet Archive Wayback Machine <www.archive.org>, January, 1998 (“Monster”).

www.simpatix.com, retrieved from Internet Archive Wayback Machine <www.archive.org>, November, 1999 – January, 2000 (“Simpatix”).

The following rejections are before us for review:

1. Claims 1-3, 6-10, and 15-18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Monster in view of Simpatix.
2. Claims 4, 5, 11-14, 19, and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Monster, Simpatix, and Fredrickson.

ISSUES

The first issue before us is whether the Appellants have shown that the Examiner erred in rejecting claims 1-3, 6-10, and 15-18 under 35 U.S.C. § 103(a) as unpatentable over Monster and Simpatix. This issue turns on whether one having ordinary skill in the art would have been led to the claimed method and system in view of the combined teachings of Monster and Simpatix.

The second issue before us is whether the Appellants have shown that the Examiner erred in rejecting claims 4, 5, 11-14, 19, and 20 under 35 U.S.C. § 103(a) as unpatentable over Monster, Simpatix, and

Fredrickson. This issue turns on whether one having ordinary skill in the art would have been led to the claimed method and system in view of the combined teachings of Monster, Simpatix, and Fredrickson.

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Monster discloses an electronic recruiting tool including a searchable database, referred to as Resume City. The employer can use simple search criteria to find resumes that match the employer's specific hiring requirements (Monster 3).
2. Monster discloses that job postings are entered into an actively searchable database according to location and discipline (Monster 6).
3. Monster discloses "Cruiter," a search agent, that can automatically search the resumes in Resume City on a weekly basis, based on the employer's pre-defined candidate profile, and e-mail candidate matches directly to the employer's desktop so that the employer can "[s]earch the database each week without even going online" (Monster 8). We understand Monster to be describing that if an employer chooses to use the 'Cruiter search agent, then that

employer's position advertisements (i.e., candidate profiles) will be associated with a weekly search periodicity and upon expiration of a weekly period, the Monster system will search the Resume City candidate database for resumes meeting the requirements of the position advertisement, and e-mail the results to the employer.

4. Monster further discloses that the employer can use a keyword function, in addition to location and discipline, to return fewer, more targeted results (Monster 9).
5. Monster does not disclose assigning significance to the keyword.
6. Monster discloses using a template for data entry as an interface with a user (Monster 13).
7. Simpatix discloses a Web-based application referred to as HireTrack which employers can use for recruiting and which communicates and shares information with employees and applicants in real-time (Simpatix 1-2).
8. HireTrack stores all applicant information for an employer in a centralized database (Simpatix 2).
9. HireTrack allows the employer to specify keywords that it would like to see on resumes (Simpatix 6).
10. Simpatix does not disclose assigning significance to specified keywords.
11. HireTrack also allows the employer to specify questions for interested applicants to answer using customizable online

questionnaires and to specify the importance of each question (Simpatix 3, 6).

12. HireTrack uses both the resume keywords and responses to questions to produce a ranked list of qualified candidates (Simpatix 7).
13. Fredrickson discloses a system that allows a prospective job applicant to contact an employer that has posted a job advertisement and answer screening questions (Fredrickson 7:¶0163 – 8:¶0164).
14. Fredrickson does not disclose a system that automatically contacts a prospective job applicant and requests a response to a screening question in response to a determination that a keyword score at least equals a threshold keyword score.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the

prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739 (citing *Graham*, 383 U.S. at 12 (emphasis added)), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

The Supreme Court stated that there are “[t]hree cases decided after *Graham* [that] illustrate the application of this doctrine.” *Id.* at 1739. “In *United States v. Adams*, ... [t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *Id.* at 1739-40. “*Sakraida and Anderson’s-Black Rock* are illustrative – a court must ask whether the improvement is more than the predictable use of prior art elements according to their established function.” *Id.* at 1740.

The Supreme Court stated that “[f]ollowing these principles may be more difficult in other cases than it is here because the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement.” *Id.* The Court explained:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

Id. at 1740-41. The Court noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”)). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

ANALYSIS

Claim Groupings

We first comment on the Appellants’ claim groupings as set forth on page 6 of the Appeal Brief. The Appellants list ten claim groupings (Groups A – J); however, this listing omits several of the claims on appeal, including independent claims 1, 11, and 15 and dependent claims 14, 16, and 17. The Appellants present arguments for patentability of claims 1 and 15 and separate arguments for patentability of claim 11. As such, we treat claims 1 and 15 as Group K and claim 11 as Group L. Because the Appellants did not present any separate arguments for patentability of dependent claims 14, 16, and 17, claim 14 will stand or fall with independent claim 11, from which it depends, and claims 16 and 17 will stand or fall with independent claim 15, from which they depend.

Rejection of claims 1-3, 6-10, and 15-18 as unpatentable over Monster and Simpatix

Claims 1 and 15 (Group K)

We begin with an analysis of independent claims 1 and 15. The Appellants contend that the prior art fails to disclose associating a search periodicity with a position advertisement and searching a candidate database for a resume upon expiration of the search period (Reply Br. 2). Monster discloses that the ‘Cruiter search agent can automatically search for resumes to fill a position advertisement on a weekly basis (Fact 3). As such, in Monster, if an employer chooses to use the ‘Cruiter search agent, then that employer’s position advertisements (i.e., candidate profiles) will be associated with a weekly search periodicity and upon expiration of a weekly period, the Monster system will search the Resume City candidate database for a resume meeting the requirements of the position advertisement (*id.*). The Appellants argue that the disclosure of a weekly search does not satisfy the claimed periodicity requirement, because Monster does not suggest the system will report at other intervals or that different reporting intervals can be assigned to individual advertisements (Reply Br. 2). This argument, however, is not commensurate with the scope of claims 1 and 15, because these claims do not require different reporting intervals for different position advertisements. Rather, claims 1 and 15 require only that a search periodicity is associated with a position advertisement. If the same search

periodicity is associated with all position advertisements on the system, the system would still meet the claim as written.

The Appellants further argue that the combination of Monster and Simpatix fails to disclose searching a candidate database for a resume including a specified keyword and scoring a candidate resume identified by the search as a function of the keyword (Reply Br. 3). We note at the outset that only claim 1, and not claim 15, includes this claim recitation. In any event, both Monster and Simpatix disclose searching using resume keywords (Facts 4 and 9), and Simpatix further discloses ranking or scoring a candidate resume identified by the search as a function of the keyword (Fact 12). Monster further teaches that the use of keyword searches is to provide the employer with fewer and more targeted results (Fact 4). We conclude that one having ordinary skill in the art would have been led to modify the system of Monster to include the keyword ranking, as taught in Simpatix, to offer the employer an additional method to sort the candidate resumes in order of importance, and thus to provide even more targeted results to the employer. *See KSR*, 127 S.Ct. at 1740 (“if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.”) The Appellants have not presented any evidence that the application of Simpatix’s ranking technique was beyond the skill of one of ordinary skill in the computer database arts. As such, the Appellants have

not persuaded us of error in the Examiner's rejection of claims 1 or 15, and we sustain the Examiner's rejection of claims 1 and 15 as unpatentable over Monster and Simpatix. Because the Appellants did not present any separate arguments for patentability of dependent claims 16 and 17, we also sustain the rejection of claims 16 and 17 for the same reasons as set forth *supra* for claim 15, from which they depend.

Claim 2 (Group A)

Claim 2 recites that the scoring of a candidate resume includes identifying the number of occurrences of the keyword in a candidate resume and comparing that number to a threshold number of occurrences. Claim 2 is broad enough to include the threshold number being one. In that case, Simpatix necessarily discloses the claimed method steps, because Simpatix identifies at least a single occurrence of the keyword in the candidate resume and compares that number to a threshold number (i.e., by asking whether the keyword appears in the resume) (Fact 12). As such, we sustain the Examiner's rejection of claim 2 as unpatentable over Monster and Simpatix.

Claim 3 (Group B)

Claim 3 recites that the method of claim 1 further comprises assigning significance to a keyword such that the scoring of the candidate resume is influenced by the assigned significance. Neither Monster nor Simpatix discloses assigning significance to a keyword (Facts 5, 10). As such, the

Examiner has failed to set forth a prima facie case of obviousness, and we do not sustain the rejection of claim 3 as unpatentable over Monster and Simpatix.

Claim 6 (Group D)

Claim 6 recites that the position advertisement is associated with an identity of a computer searchable candidate database, which is then searched upon expiration of a period substantially equal to a search periodicity. As we found *supra* for claim 1, Monster discloses searching a computer searchable candidate database on a weekly basis (Fact 3). The Appellants argue that “performing all searches for all advertisements in a single database does not disclose or suggest associating a database with a position advertisement so that a search related to a position advertisement can be performed in specific databases designated for that advertisement (Reply Br. 7). Claim 6 is broad enough to require simply a single database, wherein all position advertisements are associated with that single database. Claim 6 does not require performing a search in “specific databases designated for that advertisement.” As such, the Appellants’ argument is not commensurate with the scope of claim 6. Thus, we sustain the rejection of claim 6 as unpatentable over Monster and Simpatix.

Claim 7 (Group E)

Claim 7 recites, *inter alia*, the step of copying a candidate resume to another candidate database as a function of scoring an occurrence of a keyword in the text of the candidate resume. While Monster does not specifically describe copying the candidate resumes to another candidate database, it does disclose that the ‘Cruiter search agent will perform a weekly search and “email the matches directly to your desktop” so that the employer can “[s]earch the database each week without even going online” (Fact 3). In light of Monster’s disclosure to send a separate list of matches to the employer via email, it would have been obvious to send a copy of the matching resumes to the employer in a database via this weekly email, so that the employer could review a personalized database of matching candidate resumes without having to go on-line to access the Monster Resume City candidate resume database. The Board’s reasoning in affirming this rejection is sufficiently different from the reasoning relied upon by the Examiner, that we are designating this rejection of claim 7 as a new ground of rejection.

Claims 8-10 (Group F)

We treat claim 8 as the representative claim for this group, and claims 9 and 10 stand or fall with claim 8. Claim 8 further defines the step of creating a position advertisement to include accessing a position advertisement template with at least one candidate qualification entry and

including in a candidate qualification entry of the template no more than one candidate qualification. The Appellants argue that “[t]he Examiner’s Answer fails to explain how either of the referenced ‘disclosures’ suggests or discloses the claimed position advertisement template” (Reply Br. 8). The Examiner found that Monster discloses a job posting section of the system where jobs are organized by location and discipline (i.e., qualification) and that Simpatix discloses that the user types the job posting copy (qualification), and the system automatically creates a listing (Ans. 17). We agree with the Examiner’s finding that Monster’s teaching of a user creating a posting organized by discipline (Fact 2) satisfies the claimed candidate qualification. The only thing missing from Monster’s disclosure is that the user creates the job posting using a template. Monster does, however, disclose the use of a template for other data entry sections of its system (Fact 6). It would have been obvious to use a template to allow the user to create a job posting, in view of Monster’s explicit teaching of using templates elsewhere in its system, to make a user-friendly interface through which a user can efficiently and clearly enter the data required to create a job posting. As such, we sustain the Examiner’s rejection of claims 8-10. The Board’s reasoning in affirming this rejection is sufficiently different from the reasoning relied upon by the Examiner, that we are designating this rejection of claims 8-10 as a new ground of rejection.

Claim 18 (Group I)

Claim 18 depends from claim 15 and further recites that the device comprises a resume scoring instruction to score the candidate resume as a function of an occurrence of a character string corresponding to a keyword. The Appellants relied on arguments similar to those made with respect to claim 1, *viz.*, that Simpatix contains no suggestion that candidate resumes are scored on the basis of an occurrence of a keyword (Reply Br. 9). We disagree (Fact 12), and we sustain the Examiner's rejection of claim 18 for the same reasons provided *supra* for claims 1 and 2.

Rejection of Claims 4, 5, 11-14, 19 and 20 as unpatentable over Monster, Simpatix, and Fredrickson

Claim 11 (Group L)

Independent claim 11 recites, *inter alia*, a method that includes automatically contacting a candidate and requesting a response to at least one screening question associated with a position advertisement when that candidate's keyword score at least equals a threshold keyword score. The Examiner relied on Fredrickson to teach incorporating a screening system with an employment system (Ans. 10). The Examiner found that it would have been obvious to add the step of automatically contacting the candidate to ask a screening question, in light of the teaching of Fredrickson, to the system of Monster "for the advantage of offering an employer additional assurance that the matched resume/candidates are qualified for a potential

position with the employer” (*id.*). Although Fredrickson discloses a system that allows a prospective job applicant to contact an employer that has posted a job advertisement and answer screening questions (Fact 13), Fredrickson does not disclose a system that automatically contacts a prospective job applicant and requests a response to a screening question in response to a determination that a keyword score at least equals a threshold keyword score (Fact 14). We see no reason why one having ordinary skill in the art would have been led to the method of claim 11 in view of the combined teachings of Monster, Simpatix, and Fredrickson absent hindsight. As such, we do not sustain the Examiner’s rejection of claim 11, or its dependent claims 12-14.

Claims 4, 5 (Group C)

Claim 4 further defines the method of claim 1, and similar to claim 11, it recites the step of automatically requesting a response to a screening question associated with a position advertisement when that candidate’s resume has been identified by a keyword search. As we found *supra*, Fredrickson does not disclose a system that automatically requests a response to a screening question in response to a determination that a candidate’s resume has been selected from a keyword search (Fact 14). We see no reason why one having ordinary skill in the art would have been led to the method of claim 4 in view of the combined teachings of Monster,

Simpatix, and Fredrickson absent hindsight. As such, we do not sustain the Examiner's rejection of claim 4, or its dependent claim 5.

Claims 19, 20 (Group J)

We treat claim 19 as the representative claim for this group, and claim 20 stands or falls with claim 19. Claim 19 depends from independent claim 15 and further recites that the claimed device includes (1) a position advertisement template user interface including at least one candidate qualification entry to be associated with the employment position, and (2) a screening question template user interface with at least one candidate screening query to be associated with the employment position.

With regard to the position advertisement template user interface, the Examiner found that Monster discloses a job posting section of the system where jobs are organized by location and discipline (i.e., qualification) and that Simpatix discloses that the user types the job posting copy (qualification), and the system automatically creates a listing (Ans. 17). We agree with the Examiner's finding that Monster's teaching of a user creating a posting organized by discipline (Fact 4) satisfies the claimed candidate qualification. The only thing missing from Monster's disclosure is that the user creates the job posting using a position advertisement template user interface. Monster does, however, disclose the use of a template user interface for other data entry sections of its system (Fact 6). It would have been obvious to use a template to allow the user to create a job posting, in

view of Monster's explicit teaching of using templates elsewhere in its system, to make a user-friendly interface through which a user can efficiently and clearly enter the data required to create a job posting.

With regard to the screening question template user interface, the Simpatix HireTrack system communicates with applicants in real-time (Fact 7), and presents applicants with on-line questionnaires containing screening questions (Fact 11). Although Simpatix does not explicitly state that the questionnaires are presented in the form of a template, it would have been obvious to use a template to allow the applicant to answer a screening query, in view of Monster's explicit teaching of using templates, to make a user-friendly interface through which an applicant can communicate with the system. As such, we sustain the Examiner's rejection of claims 19 and 20.¹ The Board's reasoning in affirming this rejection is sufficiently different from the reasoning relied upon by the Examiner, that we are designating this rejection of claims 19 and 20 as a new ground of rejection.

CONCLUSIONS OF LAW

We conclude that the Appellants have failed to show that the Examiner erred in rejecting under 35 U.S.C. § 103(a) claims 1, 2, 6-10, and

¹ We find Fredrickson's disclosure of using pre-qualification screening is merely cumulative of the disclosure in Simpatix. As such, we see no need to rely on Fredrickson in order to sustain this rejection, and thus, we need not reach the issue of whether Fredrickson is properly prior art as to this application.

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15-18 as unpatentable over Monster and Simpatix and claims 19 and 20 as unpatentable over Monster and Simpatix.

We conclude that the Appellants have shown that the Examiner erred in rejecting under 35 U.S.C. § 103(a) claim 3 as unpatentable over Monster and Simpatix and claims 4, 5, and 11-14 as unpatentable over Monster, Simpatix, and Fredrickson.

DECISION

The decision of the Examiner to reject claims 1, 2, 6-10, and 15-20 is affirmed, and the decision of the Examiner to reject claims 3-5 and 11-14 is reversed. We designate our affirmance of the rejection of claims 7-10, 19, and 20 as a new ground of rejection.

Regarding the affirmed rejection(s), 37 C.F.R. § 41.52(a)(1) provides "Appellant may file a single request for rehearing within two months from the date of the original decision of the Board."

In addition to affirming the Examiner's rejection(s) of one or more claims, this decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b) (2007). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

Should Appellants elect to prosecute further before the Examiner pursuant to 37 C.F.R. § 41.50(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the Examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If Appellants elect prosecution before the Examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Board of Patent Appeals and Interferences for final action on the affirmed rejection, including any timely request for rehearing thereof.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN PART; 37 C.F.R. § 41.50(b)

vsh

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